

REMARKSClaims Rejections35 U.S.C. 102(b) Rejection

The Examiner takes the position that Claims 1-9 are unpatentable over U.S. Patent No. 3,797,324 issued to Sheesley. The Examiner takes the position that Sheesley shows a basket housing 85 including an opening for receiving rod 41, roller 90 constituting an abutment for limiting lateral displacement, means for retaining torsion arm 61 being the bore in the housing that receives pin 91, and means for securing rod 41 to housing 85 being in the form of screw threads.

Applicant has discussed this rejection with the Examiner during a recent interview. The Examiner acknowledged that Sheesley does not show a railroad switch, nor does it show the same structure as that of Applicant's invention. The Examiner doggedly maintained that the structure set forth in Applicant's claims reads on Sheesley, even though Sheesley does not comprise Applicant's "lost motion basket housing for use in a basket assembly in a railroad switch." Sheesley teaches a pneumatic actuator that has a cylinder and a piston with a shaft attached thereto. Nonetheless, the Examiner vigorously maintains that Applicant's lost motion basket housing is the same as Sheesley's cylinder. The Examiner also maintained that Sheesley teaches an opening as claimed, even though there is nothing in Sheesley that allows "unimpeded lateral displacement of a rod or bar therethrough." The Examiner takes the position that Sheesley provides an opening in a crank that accepts and secures the shaft at the end of the piston, and that this is the same thing as Applicant's claimed invention element, even though Sheesley captures and secures the end of the shaft with a pin, i.e. it does not provide for "unimpeded lateral displacement." The Examiner also maintains that Sheesley teaches Applicant's claimed abutment because the insertion of the shaft in

Sheesley into the crank results in an abutment. This entirely ignores Applicant's claim language, which requires "at least one abutment in said opening for limiting lateral displacement through said opening of a surface associated with said rod or bar." Applicant clearly claims a rod or bar that has an unimpeded lateral displacement through an opening in a lost motion basket housing and an abutment for limiting that displacement. In effect, this is a lost motion mechanism. It is neither reasonable nor proper to read these clear and unambiguous limitations on Sheesley. Finally, the Examiner explained that the possibility of a slot, alluded to in Sheesley's specification but not shown in Sheesley's figures, teaches a lost motion mechanism. It was the Examiner's position that any time a slot is provided in any mechanism it is a lost motion mechanism. Thus, Sheesley was deemed to teach a lost motion basket assembly for use in a railroad switch even though Sheesley neither mentions nor shows a lost motion mechanism, and even though Sheesley is a pneumatic actuator and in no way concerned with a railroad switch. When asked, the Examiner appeared to be unwilling to take Official Notice of this in support of his position.

Applicant is of the opinion that this rejection is entirely without credible merit. During the interview the Examiner was unwilling to concede that Applicant's claims do entirely (if at all) read on Sheesley [Is this what you wanted to say here? Wasn't the Examiner taking the position that the Applicant's claims did read on Sheesley?]. The Examiner did indicate that Sheesley would be avoided if the Applicant's claims were amended to limit their subject matter to "a railroad switch." Applicant's replacement claims are so limited.

The Examiner also indicated that such amendment would require another search, i.e. Applicant would be required to pay another filing fee to continue prosecution of the application. Applicant submits this response in connection with an RCE under protest. The claims were limited to a railroad switch *ab initio*. There would be no need to search further if the Examiner had initially searched the invention as claimed, i.e. for a lost motion basket assembly for use in a railroad switch. By citing Sheesley, a pneumatic actuator, it is clear that the Examiner did not conduct a proper search. By

insisting that Sheesley is a proper 102 rejection, the Examiner has unnecessarily prolonged prosecution of the application, resulting in considerable delay and additional expense for Applicant.

Given the Examiner's clear indication that Sheesley would be avoided by the amendments submitted herewith, Applicant urges the Examiner to allow the application at this time, an additonal search not being required as stated above.

Thus, the Applicant respectfully submits that the amended claims sufficiently distinguish the claimed invention from that taught in Sheesley. Because Claims 2-4 and 6-9 are dependent on Claims 1 and 5, respectively, the Applicant respectfully submits that these dependent claims are also allowable over Sheesley.

**CONCLUSION**

The Applicant submits that the claims are in condition for allowance and respectfully requests that a Notice of Allowance be issued in this case.

Respectfully submitted,



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